

## Montreux Document Questionnaire

- 1. Provide examples, if any, of how you have determined which services may or may not be contracted out to PMSCs. If you have done so, please specify what and how services are limited, and how you take into account factors such as whether those services could cause PMSC personnel to become involved in direct participation in hostilities. Please indicate by what means you do this (e.g., national legislation, regulation, policy, etc.). [GP 1, 24, 53]**

As a matter of U.S. law and policy, an “inherently governmental function” (IG function) cannot be contracted out. The Federal Activities Inventory Reform (FAIR) Act of 1998 defines an IG function as “a function so intimately related to the public interest as to require performance by Federal Government employees.” A number of U.S. statutory, regulatory, and agency provisions provide additional guidance regarding what constitutes an IG function and designate specific functions as IG or commercial.

Under policy guidance applicable to all executive branch departments and agencies, *see* Office of Management and Budget, Policy Letter 11-01, *Performance of Inherently Governmental and Critical Functions* (September 12, 2011), IG functions that may not be contracted out include the command of military forces, combat, security operations performed in direct support of combat as part of a larger integrated armed force, security that entails augmenting or reinforcing others that have become engaged in combat, and security operations performed in environments where, in the judgment of the responsible Federal official, there is significant potential for the security operations to evolve into combat. Where the U.S. military is present, the judgment of the military commander should be sought regarding the potential for the operations to evolve into combat.

Department of Defense Instruction 1100.22, *Policies and Procedures for Workforce Mix*, April 12, 2010, defines combat operations and provides further guidance on when the provision of security services would be IG. The instruction defines combat operations as the deliberate destructive and/or disruptive action against the armed forces or other military objectives of another sovereign government or against other armed actors on behalf of the United States. This entails the authority to plan, prepare, and execute operations to actively seek out, close with, and destroy a hostile force or other military objective by means of, among other things, the employment of firepower and other destructive and disruptive capabilities. These functions may not be performed by contractor personnel.

Security provided for the protection of resources (people, information, equipment, supplies, facilities, etc.) and operations in uncontrolled, unpredictable, unstable, high risk, or hostile environments inside or outside the United States entail a wide range of capabilities, some of which are IG and others of which are commercial. Security is IG if it is performed in

environments where there is such a high likelihood of hostile fire, bombings, or biological or chemical attacks by groups using sophisticated weapons and devices that, in the judgment of the military commander, the situation could evolve into combat. Security performed in such high-risk environments is designated for military performance, and private security contracts are not a force structure substitute for these requirements.

Security is also IG if, in the commander's judgment, decisions on the appropriate course of action would require substantial discretion, the outcome of which could significantly affect U.S. objectives with regard to the life, liberty, or property of private persons, a military mission, or international relations. Such actions typically require high-risk, on-the-spot judgments regarding the appropriate level of force, the acceptable level of collateral damage, and whether the target is friend or foe in situations pivotal to U.S. interests. This type of security requires command decisions, military training, and operational control, and it is reserved for military personnel. Combatant Commander Orders implement these instructions and forbid private security contractors (PSCs) from taking a direct part in combat operations, combat-like operations, offensive operations, quick reaction force missions, cordon and search operations, or other uniquely military functions.

PSCs under the Department of State's Worldwide Protective Services (WPS) contract do not perform IG functions, as the security services they provide are solely protective and defensive in nature. The WPS contract provides the State Department with movement security, specialized emergency services, and guard services for U.S. diplomatic missions overseas. Although not all WPS task orders are carried out in areas of armed conflict, the provisions and practices under the WPS contract are cited herein to demonstrate how the legal obligations and good practices set forth in the Montreux Document are being implemented where WPS contractors are providing services in areas of armed conflict.

**2. Indicate if you require PMSCs to obtain an authorization to provide any one or more private military and security services. This may include whether PMSCs and/or individuals are required to obtain licenses. [GP 25, 26, 54]**

Pursuant to the Arms Export Control Act (AECA), as implemented through the International Trade in Arms Regulations (ITAR) (available at: <[http://pmddtc.state.gov/regulations\\_laws/itar\\_official.html](http://pmddtc.state.gov/regulations_laws/itar_official.html)>), the United States controls the export and import of defense articles, including technology, and defense services. Any person wishing to export these items must register with the Department of State prior to exporting any item. A license or other authorization is required for the export of "defense articles," which includes weapons, other military material, and items or technology with specific military applications. Further, a license or other authorization is required for the export of "defense services," which is defined as the furnishing of assistance, including training to foreign persons whether in the United States or

abroad in the development, design, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of a defense article. Accordingly, the export of the training in the maintenance and operation of weapons systems and advice to, or training of, local forces and security personnel, as described in the definition of PMSCs in paragraph nine of the Preface of the Montreux Document, constitute a “defense service” under ITAR. Specific weapons, material, technology, and defense services covered by ITAR are found on the United States Munitions List (USML) and set forth in Part 121 of the ITAR.

**3. Is a central authority designated for authorizations? [GP 26] If so, please provide details.**

GP 26 does not apply to the United States, as the United States is not a Territorial State as defined in the Montreux Document.

**4. Provide details of procedures for the authorization and/or selection and contracting of PMSCs and their personnel [GP 2, 28, 57]. Please include details of how you ensure adequate resources are applied to this function [GP 3, 27, 58] and examples of how such procedures are transparent and supervised. [GP 4, 29, 59]**

The U.S. Government has extensive experience in selecting and contracting for private security services. The Federal acquisition process is governed by the Federal Acquisition Regulations (FAR) found at Title 48 of the Code of Federal Regulations (CFR). The FAR provides standardized contract clauses, and Requests for Proposals (RFPs) indicate the elements upon which contract award decisions will be based.

The Defense Federal Acquisition Regulation Supplement (DFARS) and the Department of State Acquisition Regulation (DOSAR) provide acquisition procedures specific to the Departments of Defense and State, respectively. In addition, procedures for soliciting and awarding contracts in armed conflict and comparable situations can be found in the Defense Contingency Contracting (DCC) Handbook, available at: <<http://www.acq.osd.mil/dpap/ccap/cc/jcchb/index.html>>. Solicitations for contracts are publicly available and can be accessed through a number of sources, including: <<https://www.fbo.gov/index?cck=1&au=&ck=>> and <[http://www.defense.gov/landing/contract\\_resources.aspx](http://www.defense.gov/landing/contract_resources.aspx)>. Contract awards are published on a publicly available website at: <<http://www.defense.gov/Contracts/default.aspx>>.

DFARS Part 225.74 addresses the requirements for contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States. The supporting Procedures, Guidance, and Information (PGI) 225-7401(a) requires potential DoD contractors to be informed that they must be in compliance with ANSI/ASIS PSC.1-2012, American National Standard,

*Management System for Quality of Private Security Operations—Requirements with Guidance* (hereafter “the PSC Standard”). Successful offerors will include evidence that the company is in compliance with that standard.

The Department of State anticipates that conformance with the PSC Standard will be a requirement in the bidding process for the successor WPS contract, which provides the Department with movement security, specialized emergency services, and guard services for U.S. diplomatic missions overseas. The Department also plans to make membership in the International Code of Conduct Association (ICoCA) a requirement in the bidding process for the successor WPS contract, so long as the process moves forward as expected and the association attracts significant industry participation.

The Department of Defense has more than 20,000 warranted Contracting Officers (COs) and more than twice as many trained and certified Contracting Officer’s Representatives (CORs) to assist in the selection and contracting of DoD contracted support, including services provided by PSCs and other services as described in paragraph 9(a) of the Preface to the Montreux Document. Duties and performance expectations of CORs can be found in the Defense Contingency Contracting Officer Representative (COR) Handbook, available at: <<http://www.acq.osd.mil/dpap/ccap/cc/corhb/index.html>>.

**5. To what degree have you sought to harmonize any authorization system with those of other States. [GP 56]**

The United States has worked closely with other Contracting States and Home States to secure wide acceptance of the PSC Standard. The United Kingdom has adopted the PSC Standard for use in its overseas contracts for private security services, and the International Organization for Standardization has accepted the PSC Standard for development as an international standard. The Department of Defense also provides staff and faculty assistance for international education and outreach on PMSC-related issues.

The United States has actively participated in other international harmonization efforts, such as the ICoC and the establishment of the ICoCA. The United States is also a founding member of the Advisory Forum of Montreux Document Participants. The forum will provide an informal venue for Montreux Document participating states to share information to promote the implementation of the legal obligations and good practices set forth in the Montreux Document.

**6. Provide details on criteria that have been adopted that include quality indicators to ensure respect of relevant national law, international humanitarian law and human rights law. Indicate how you have ensured that such criteria are then fulfilled by the PMSC. [GP 5, 30] If relevant, please indicate if lowest price is not the only criterion for the selection of PMSCs. [GP 5]**

Through contracting requirements and rigorous oversight, the Departments of Defense and State have implemented measures to help ensure the high quality performance of government-contracted PSCs in conformance with applicable national and international laws. COs within the Departments of Defense and State provide contract management and oversight of government contracts, including those for PSC services, to ensure compliance with applicable contract requirements and standards. The CO possesses the sole authority to enter into or modify a contract on behalf of the U.S. Government. The CO may delegate authority to a COR and other government contract administration personnel to assist in the administration of the contract or task order.

The Security Branch, within the Department of State's Office of Acquisitions Management, administers and oversees all PSC contracts utilizing consistent best practices in accordance with the FAR. The specific duties and authorities of Department of State contract administration personnel are detailed in the delegation letter issued by the CO. Contract administration personnel must be familiar with the base contract and any task orders for which they are responsible and must maintain official written records to document contractor performance. These records are used to substantiate contractor performance assessments documented in periodic reports by the COR to the CO.

Lowest price is not the only criterion for the selection of PMSCs. In both Departments, contracts and task orders under existing contracts are negotiated and awarded on a "best value" basis when the expected outcome of the acquisition in the Government's estimation provides the greatest overall benefit in response to the requirement. 48 CFR 15.302, *Contracting by Negotiation*, provides that "[t]he objective of source selection is to select the proposal that represents the best value." By contrast, lowest price technically acceptable (LPTA) source selection is appropriate when the expectation is that best value will result from selection of the technically acceptable proposal with the lowest evaluated price.

One means of determining minimal technically acceptable performance is through the use of performance standards. Using this process, the emphasis that cost is given in an evaluation of proposals will not carry significant weight if the offeror cannot demonstrate the ability to meet applicable performance standards. As noted above, PGI 225.7401(a) requires DoD acquisitions involving the performance of security services, as defined in 48 CFR 252.225-7039, in areas of combat operations, contingency operations, or other military operations or exercises, to

incorporate, and require compliance with, the PSC Standard. The Department of State anticipates requiring Contractors to demonstrate conformance with the PSC Standard in order to bid on the successor WPS contract. The PSC Standard provides quality indicators for the performance of PSC-related services, and is supported by ANSI/ASIS PSC.2-2012, *Conformity Assessment and Auditing Management Systems for Quality of Private Security Company Operations*, and ANSI/ASIS PSC.3-2013, *Maturity Model for the Phased Implementation of a Quality Assurance Management System for Private Security Service Providers*, which provides requirements and guidance for assessing a contractor's conformity with the PSC Standard.

The Defense Contract Auditing Agency (DCAA) audits contractor performance on all Department of Defense contracts, as well as the Department of State's WPS task orders, and the Defense Contract Management Agency and the State Department's Office of Acquisitions Management assess contractor performance on DoD contracts and the WPS contract, respectively. Contractor performance is also subject to audit by Special Inspector Generals and the Offices of Inspector General (OIG) at the Departments of Defense and State.

**7. Describe how the following elements, if any, are considered in authorization or selection procedures and criteria. Please also indicate to what degree they are included in terms of contract with, or terms of authorization of, PMSCs or their personnel [GP 14, 39, 40, 67]:**

Section 862 of the National Defense Authorization Act of 2008 (Public Law 110-181), as amended, mandated that the Secretary of Defense, in coordination with the Secretary of State, prescribe regulations on the selection, training, equipping, and conduct of personnel performing private security functions in designated areas of combat operations, including certain contingency operations and other significant military operations as appropriately designated (hereinafter “designated areas”). The final rule, entitled *Private Security Contractors (PSCs) Operating in Contingency Operations, Combat Operations, or Other Significant Military Operations* (32 CFR 159), implements this statutory requirement. Section 862 also required revision of the FAR to require contractors to comply with the policies established in 32 CFR 159. The FAR was revised accordingly by adding sections 25.302 through 25.302-6 to subpart 25.3. 48 CFR 25.302-6 requires all covered contracts to include the clause contained at 52.225-26, *Contractors Performing Private Security Functions Outside the United States*, which, in turn, requires PSCs under covered contracts to ensure that their personnel comply with the policies set forth in 32 CFR 159. In addition, the WPS contract incorporates the requirements of 48 CFR 52.225-19, *Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States*.

During the acquisition process, PSCs are evaluated on their ability to comply with these regulations and the solicitation requirements, which address elements (a)-(h), below. Offerors

whose proposals do not meet these requirements are deemed technically unacceptable or nonresponsible and are ineligible for contract award.

**a. past conduct [GP 6, 32, 60].**

48 CFR 25.302-6 requires contracts for private security functions in designated areas to specify that “the Contractor’s failure to comply with the requirements of this clause [the clause at 48 CFR 52.225-26] will be included in appropriate databases of past performance and considered in any responsibility determination or evaluation of past performance.” The database used to track this information is the Contractor Performance Assessment Reporting System (CPARS). Reports in CPARS assess contractor performance and provide a record, both positive and negative, of the contractor during a specified period of time. Each assessment is based upon objective facts and supported by program and contract management data, such as cost performance reports, customer comments, quality reviews, technical interchange meetings, financial solvency assessments, construction/production management reviews, contractor operations reviews, functional performance evaluations, and earned contract incentives. Past performance documented in CPARS is used to evaluate contractor proposals for future contracts in support of contingency operations with the U.S. Government, anywhere in the world.

The Department of State requires prospective contractors to submit for review prior to award three past performance references from prior clients. In addition, in both Departments, the CO uses the periodic reports, as well as the recommendations in the annual performance review, to support the decision to exercise another option year or terminate the contract. The Department retains all incident reports, terminations, and dismissals of PSC personnel and tracks eligibility for employment under the contract.

**b. financial and economic capacity [GP 7, 33, 61].**

48 CFR 9.104-1 requires a prospective contractor to demonstrate adequate financial resources (or the ability to obtain the resources) needed to perform the contract work. The CO is required to review evidence of economic capacity when considering contract award.

The Department of State reviews prospective contractors’ Dun and Bradstreet reports prior to award to validate financial and economic capacity. In addition, the Department requires prospective contractors to submit three years of audited financial performance data, including income statements, balance sheets, and cash-flow statements for consideration and evaluation prior to award.

Defense Base Act (DBA) insurance is required under all DoD contracts for services to be performed outside the United States, as well as under the Department of State’s WPS contract.

In addition, 48 CFR 52.228-5 and 428.310 require Federal contractors, at their own expense, to provide and maintain during the entire performance of the contract, at least the kinds and minimum amounts of insurance required in the schedule or elsewhere in the contract.

**c. possession of required registration, licenses or authorizations (if relevant) [GP 8].**

32 CFR 159.6 requires PSCs to develop procedures to ensure that their personnel meet all the legal, training, and qualification requirements for authorization to carry a weapon in accordance with the terms and conditions of their contract and host country law. 48 CFR 52.225-26 implements 32 CFR 159 by requiring PSCs under covered contracts to ensure that their personnel performing private security functions under the contract comply with any instructions for authorizing and accounting for weapons to be used by those personnel and for registering and identifying armored vehicles, helicopters, and other military vehicles operated by those personnel.

The WPS contract provides that armed contractor personnel are subject to host country laws regarding the licensure, carrying, and proper use of firearms. The contractor is responsible for ensuring that all armed contractor personnel are properly licensed in accordance with local law for the duration of time such personnel are in-country and must maintain all permits, licenses, and appointments required for work under the contract.

**d. personnel and property records [GP 9, 34, 62].**

Section 862 of Public Law 110-181 (with amendments) and 48 CFR 52.225-26 require PSCs under covered contracts to ensure that their personnel performing private security functions under the contract comply with any instructions for: registering, processing, accounting for, and keeping appropriate records of personnel performing private security functions; authorizing and accounting for weapons to be used by personnel performing private security functions; and registering and identifying armored vehicles, helicopters, and other military vehicles operated by contractors performing private security functions. The Departments of Defense and State use the Synchronized Pre-deployment Operations Tracking (SPOT) system to enter this information and maintain situational awareness.

**e. training [GP 10, 35, 63].**

Section 862 of Public Law 110-181 (with amendments) and 32 CFR 159 require the development of procedures to implement pre-deployment training requirements for personnel performing private security functions in designated areas, including, but not limited to, the identification of resources and assistance available to PSC personnel, country information and cultural training, guidance on working with host country nationals and military personnel, rules

on the use of force and graduated force procedures, and requirements and procedures for direction, control and the maintenance of communications with regard to the movement and coordination of PSCs and PSC personnel, including specifying interoperability requirements. 48 CFR 52.225-26 implements 32 CFR 159 by requiring PSCs under covered contracts to ensure that their personnel performing private security functions under the contract understand their obligation to comply with qualification and training requirements, as well as any instructions related to weapons, equipment, force protection, security, health, safety, or relations and interaction with locals, and rules on the use of force.

Department of Defense contracts include 48 CFR 252.225-7040, which additionally requires all contractors accompanying the U.S. Armed Forces to receive pre-deployment training on applicable provisions of the laws of war and any other applicable treaties and international agreements. Section 9.3 of the PSC Standard includes requirements for training PSC personnel in measures against bribery, corruption, and in handling complaints by the local population. As cited elsewhere in this response, conformance with the PSC Standard is mandatory in all DoD contracts for security functions performed overseas.

Under the WPS contract, PSCs must successfully complete all required pre-deployment training before beginning work on any WPS contract or task order. Proof of successful training completion must be kept on file by the contractor and provided to the Department at any time upon request. WPS pre-deployment training includes familiarization with the Department of State, operating in a contingency environment, and cultural familiarization with the area of deployment, as well as labor category-specific firearms and operational training. The State Department's Bureau of Diplomatic Security (DS) performs periodic program management reviews (PMRs) of contractor training and training facilities (domestic and overseas) to ensure compliance with program, contract, and task order requirements.

**f. lawful acquisition and use of equipment, in particular weapons [GP 11, 36, 64].**

See response to question 2, above. Section 862 of Public Law 110-181 (with amendments) requires contractors and all employees of the contractor or of any subcontractor, who are responsible for performing private security functions under such contract, to comply with applicable laws and regulations of the United States and the host country, and applicable treaties and international agreements. 48 CFR 52.225-26 provides the specific contract clauses requiring PSCs under covered contracts to ensure that their personnel performing private security functions under the contract are briefed on, and understand their obligation to comply with, applicable laws and regulations of the United States and the host country, applicable treaties and international agreements, and any instructions issued by the applicable commander or relevant Chief of Mission (COM) related to weapons and equipment. Similarly, 48 CFR 252.225-7040(d) requires DoD-contracted PSCs to comply with, and to ensure that their personnel authorized to

accompany U.S. Armed Forces deployed outside the United States are familiar with and comply with, all applicable U.S., host country, and third country laws; provisions of the law of war, and any other applicable treaties and international agreements; U.S. regulations, directives, instructions, policies, and procedures; and orders, directives, and instructions issued by the Combatant Commander. These encompass laws, regulations, and directives applicable to the acquisition and use of weapons and other equipment.

Combatant Commander Orders specify weapons authorization policies, including types of weapons, ammunition, and procurement. These orders typically provide restrictions regarding weapons and ammunition types that exceed those permitted by the law of the host nation. For example, Combatant Commander Orders typically prohibit the use of anything other than full-jacketed ball ammunition, even where other types of ammunition would be allowable for civilian personal defense under host nation law. Lawful acquisition of weapons is also required by Section 9.2.5 of the PSC Standard.

All WPS Contractors utilize government furnished vehicles and weapons when deployed, and all equipment utilized by WPS PSCs must be approved in advance by DS.

**g. internal organization and regulation and accountability [GP 12, 37, 65].**

Title 48 CFR 9-103(a) requires that purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only. To be determined responsible, 48 CFR 9.104-1 provides that a contractor must “have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors).”

- With regard to GP 12 a), 32 CFR 159.6 requires that all requests for permission to arm PSC personnel include documentation of individual training, covering weapons familiarization and qualification, rules for the use of force (RUFs), limits on the use of force, including whether defense of others is consistent with host nation Status of Forces Agreements (SOFAs) or local law, the distinction between the rules of engagement applicable to military forces and the prescribed RUFs that control the use of weapons by civilians, and the Law of Armed Conflict. These requirements also exist in the PSC Standard. Specifically, requirements for company policies promoting compliance with international humanitarian law, human rights law, and RUFs are set forth in sections 9.5.1 and 9.5.2. Implementing guidance for these sections is provided in sections A.2, on

Human Rights and International Law; A.9.5.1, on Respect for Human Rights; and A.9.5.3, on RUFs and Use of Force Training.

- With regard to GP 12 b), 48 CFR 52.225-26 requires PSCs under covered contracts to ensure that their personnel performing private security functions under the contract comply with directives in the contract for specified incident reporting and cooperate with any government-authorized investigations of incidents reported. The WPS contract requires that contractors notify the government of all serious incidents and incidents involving misconduct. For DoD contracts, complaints and grievance mechanisms are set forth in Section 9.4.3 of the PSC Standard, with implementing guidance provided in A.9.5.10. Whistleblower protections are covered in Section 9.4.4, with additional guidance in A.9.4.3. Incident monitoring, reporting, and internal investigations are covered in Section 9.5.6, with implementing guidance in A.9.5.10.

**h. welfare of personnel [GP 13, 38, 66].**

In 2003, the Trafficking Victims Protection Act (TVPA) was amended (Pub. L. 108-193) to require that Federal government contracts with private entities include a provision authorizing the government to terminate the contract, or take other remedial action, without penalty, if the contractor or subcontractor engages in severe forms of trafficking in persons, procuring commercial sex acts, and using forced labor during the performance of the contract. This requirement has been implemented in all Federal government contracts through 48 CFR 22.1700, which provides that all Federal government contracts shall prohibit contractors, subcontractors, and their employees from engaging in such activities. The scope of these prohibited activities was expanded by Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts (Sept. 25, 2012) and by 2013 amendments to the TVPA contained in Title XVII of the National Defense Authorization Act, Pub. L. 112-239, the End Trafficking in Government Contracting Act (ETGCA) to also address the unscrupulous recruitment practices widely known to facilitate human trafficking. Although their provisions are not identical, the Executive Order and ETGCA authorize termination and other remedial action for activities that directly support or promote trafficking in persons, such as using fraud to recruit employees, confiscating employee identity or immigration documents, and charging employees recruitment fees that can lead to debt bondage. Among other things, they both also require contractors to apply new, tailored compliance measures for larger contracts performed overseas to prevent such activities from occurring, to ensure their subcontractors do the same, and also to certify that such plans and procedures are in place prior to being awarded the contract. The process of incorporating these more extensive and precise restrictions into the FAR is underway; proposed amendments have been published for public comment in the Federal Register (78 F.R. 59317 (Sept. 26, 2013)) but are not yet in effect.

Consistent with GPs 13 and 66, 48 CFR 252.222-7002 requires DoD contractors working overseas to comply with all local laws, regulations, and labor union agreements governing work hours. These requirements are implemented through specific contract language, including Joint Theater Support Contracting Command (JTSCC) Special Clause 952.222-0001, *Prohibition Against Human Trafficking, Inhumane Living Conditions, and Withholding of Employee Passports*, which is included in PSC contracts in Iraq and Afghanistan. This clause requires contractors to provide all employees with a signed copy of their employment contract, in English as well as the employee's native language, defining the terms of employment or compensation.

- Pay. The proposed amendments to the FAR include a provision for all Federal government contracts allowing the government to terminate the contract, without penalty, if the contractor or subcontractor charges recruited employees recruitment fees
- Section 9.2.1 of the PSC Standard also addresses adequate compensation, providing that “[p]ersonnel shall be provided with adequate pay and remuneration arrangements, including insurance, commensurate to their responsibilities.” Additional guidance implementing this requirement is found in A.9.2.1.
- Safety. Under the TVPA and implementing regulation 48 CFR 22.1700, all Federal government contracts include a provision allowing the government to terminate the contract, without penalty, if the contractor or subcontractor engages in trafficking in persons, the procurement of a commercial sex act, or the use of forced labor in the performance of the contract. Under the proposed amendments to the FAR, arranging or providing housing that fails to meet host country housing and safety standards would be an act allowing for such termination. In addition, JTSCC Special Clause 952.222-0001 requires DoD contractors to provide adequate living conditions (sanitation, health, safety, living space) for their employees and specifies what those conditions are. The clause further requires contracting officers and their representatives to conduct random checks to ensure that contractors and subcontractors at all tiers are adhering to the TVPA. Under the WPS contract, CORs and Government Technical Monitors (GTMs) conduct regular Trafficking in Persons (TIP) inspections, as well as inspections of meal services and health and welfare inspections of PSC personnel living quarters and common areas.
- Travel docs. 18 U.S.C. §§ 1592 prohibits knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person, to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person’s liberty to move or travel, in order to maintain the labor or services of that person. This prohibition is included in Federal government contracts pursuant to 48 CFR 52.222-50, *Combating Trafficking in Persons*. Under the proposed amendments

to the FAR, all Federal government contracts will include a provision allowing the government to terminate the contract, without penalty, if the contractor or subcontractor destroys, conceals, removes, confiscates, or otherwise denies an employee access to his/her identity or immigration documents. In addition, JTSCC Special Clause 952.222-0001 provides specific contract language requiring contractors to hold employee passports and other identification documents discussed above for the shortest period of time reasonable for administrative processing purposes.

- Unlawful discrimination. Unless otherwise exempted, 48 CFR 22.810(e) specifies that Federal contracts must include a clause stating that the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Also, the contractor shall take affirmative steps to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. The contractor shall also take positive action to ensure that employees are aware of these non-discrimination requirements and the means to process complaints.

GP 13 and all subordinate elements are also required under the PSC Standard, sections 9.2.1 and A.9.2.1.

**8. To what extent is the conduct of any subcontracted PMSC required to be in conformity with relevant law? Please include requirements relating to liability and any notification required. [GP 15, 31]**

The requirement under 32 CFR 159 and 48 CFR 52.225-26 to conform to relevant law (see response to question 6(f), above) applies to subcontractors providing private security services. Specifically, section 52.225-26 requires PSCs to include the requirements of that clause in all subcontracts to be performed in the designated areas. Section 52.225-26 further provides that the duty of the PSC to comply with the requirements of the clause shall not be reduced or diminished by the failure of a higher- or lower-tier contractor or subcontractor to comply with the clause requirements or by a failure of the contracting activity to provide required oversight. As noted above, 48 CFR 252.225-7040(d) and clauses of PSC contracts specify that the contractor shall comply with, and shall ensure that its personnel authorized to accompany U.S. Armed Forces deployed outside the United States are familiar with and comply with all applicable U.S., host country, and third country national laws; provisions of the law of war, as well as any other applicable treaties and international agreements; U.S. regulations, directives, instructions, policies, and procedures; and orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

**9. Do you use financial or pricing mechanisms as a way to promote compliance? These may include requiring a PMSC to post a financial bond against non-compliance. [GP 17, 41]**

Section 862 of Public Law 110-181 (with amendments), as implemented in FAR 52.225-26 and DFARS 225.370-5(a)(2), requires that the failure of a contractor under a covered contract to comply with the requirements of the regulations governing private security contractors as implemented in contract clauses in an award fee contract shall be considered in any evaluation of contract performance by the contractor for the relevant award fee period. Such failure may be a basis for reducing or denying award fees for such period, or for recovering all or part of award fees previously paid for such period. In the case of a failure to comply that is severe, prolonged, or repeated, such failure will be referred to the suspension or debarment official for the appropriate agency and may be a basis for suspension or debarment of the contractor. In addition, standard contract clauses in the FAR provide for possible remediation measures, including, but not limited to, the withholding of payment, reduction of award fees, and reimbursement of U.S. Government expenses. The WPS contract does not require contractors to post bonds but contains financial incentives for compliance.

**10. When granting an operating license to PMSCs, do you impose any limitations on the number of PMSC personnel and/or the amount/kinds of equipment employed when performing PMSC services? [GP 42] If so, please provide details.**

GP 42 does not apply to the United States, as the United States is not a Territorial State as defined in the Montreux Document.

**11. Please describe any rules/limitations on the use of force and firearms. For example, these may include use of force "only when necessary and proportionate in self-defence or defence of third persons", and "immediately reporting to competent authorities" after force is used. [GP18, 43]**

Department of Defense Directive 5210.56, *Carrying of Firearms and the Use of Force by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities*, April 1, 2011, provides specific guidance for the use of force and firearms by DoD military and DoD civilians and DoD contractor personnel. This Directive is supplemented and implemented by combatant commander orders (or fragmentary orders (FRAGOs)), violations of which may subject a person to punitive or administrative action. These orders apply the requirements found in DoDD 5210.56, tailoring them for the specific terms of the contract and the political, legal, and operational context of the area in which the contract is being performed. These FRAGO's include, but are not limited to, specific procedures for requesting arming authorization, the types of weapons authorized, training requirements, registration requirements for personnel and weapons, procedures for incident reporting, as well as specific RUFs. These FRAGOs direct the use of weapons consistent with the civilian status of PSC personnel and exclude PSC personnel

from participating in combat operations. 48 CFR 252.225-7039, *Contractors Performing Private Security Functions*, requires DoD contractor personnel performing private security functions to follow the RUFs issued by the applicable Combatant Commander.

Additionally, 48 CFR 252.225-7040, *Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States*, is included in DoD contracts for PSC services and states that the contractor shall ensure that the contractor and all contractor personnel performing security functions under the contract comply with any orders, directives, and instructions to contractors performing private security functions that are identified in the contract. Contractor personnel are only authorized to use deadly force in self-defense and when such force reasonably appears necessary to execute their security mission to protect assets/persons consistent with the regulations and orders cited above. The clause also provides that, unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel authorized to accompany the U.S. Armed Forces can subject such personnel to U.S. or host nation prosecution and civil liability.

Title 48 CFR 252.225-7039 also implements requirements in Section 862 of Public Law 110-181, by requiring DoD contractors to report incidents in which: a weapon is discharged by PSC personnel; personnel performing private security functions are attacked, killed, or injured; persons are killed or injured or property is destroyed as a result of conduct by contractor personnel; a weapon is discharged against personnel performing private security functions or personnel performing such functions believe a weapon was so discharged; or specific active, non-lethal countermeasures are employed by PSC personnel in response to a perceived, immediate threat.

WPS contractors and their personnel are required to abide by the applicable mission firearms policy, the prescribed RUFs and the Deadly Force Policy in the WPS base contract, and Department policy guidance. In the event of a conflict, the mission firearms policy takes precedence. The WPS contract incorporates 48 CFR 52.225-19, which states that contractor personnel are authorized to use deadly force only in self-defense or when the use of such force reasonably appears necessary to execute their security mission to protect assets/persons, consistent with the terms and conditions contained in the contract or with their job description and terms of employment.

**12. Please provide information on any rules in place regulating the possession of weapons by PMSCs and their personnel. [GP 44, 55]**

GP 44 does not apply to the United States, as the United States is not a Territorial State as defined in the Montreux Document.

GP 55, the requirement to have appropriate rules on the accountability, export, and return of weapons and ammunition by PMSCs, is controlled pursuant to the Arms Export Control Act (AECA), as implemented by the International Trade in Arms Regulation (ITAR). The specific requirements for the export or import of weapons and ammunition are described in the answer to question 2, above. Accountability of such weapons and ammunition is maintained through end-use monitoring pursuant to section 40A of the AECA and non-transfer and use assurances required under section 123.9 of the ITAR. For certain defense articles, a separate non-transfer and end-use certificate must be signed by the license applicant, foreign consignee, and foreign end-user that stipulates the defense article will not be re-exported, resold, or otherwise disposed of without the prior written approval of the Department of State.

In addition, 32 CFR 159 provides that PSC personnel under covered contracts may be armed only upon obtaining the appropriate authorization. Requests for such authorization must include, among other things, documentation of individual training covering weapons familiarization and qualification, RUFs, limits on the use of force, the distinction between the rules of engagement and the prescribed RUFs, and the Law of Armed Conflict, as well as written verification that PSC personnel are not prohibited under U.S. law from possessing firearms. Such requests must also include written acknowledgment by the PSC and its personnel that: (i) potential civil and criminal liability exists under U.S. and local law or host nation SOFAs for the use of weapons; (ii) proof of authorization to be armed must be carried by each PSC personnel; (iii) PSC personnel may possess only U.S. Government-issued and/or -approved weapons and ammunition for which they have been qualified according to specified standards; (iv) PSC personnel were briefed and understand limitations on the use of force; (v) authorization to possess weapons and ammunition may be revoked for non-compliance with established RUFs; and (vi) PSC personnel are prohibited from consuming alcoholic beverages or being under the influence of alcohol while armed.

**13. To what degree are personnel of a PMSC, including all means of their transport, required to be personally identifiable whenever they are carrying-out activities under a contract? [GP 16, 45]**

The WPS contract incorporates 48 CFR 52.225-19, *Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States*, which prohibits covered PSC personnel from wearing military clothing unless specifically authorized by the Combatant Commander. If authorized to wear military clothing, PSC personnel must wear distinctive patches, armbands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures. WPS contractors in uniform (i.e., static guards) wear distinctive patches identifying their company, while plain clothes contractors wear such patches if directed by the RSO. All WPS contractor personnel are required to carry personal identification cards, providing the individual's name, the labor categories they are authorized to fill, and the retest dates of any firearms qualifications and physical fitness testing.

Similarly, 48 CFR 252.225-7039 requires DoD PSC personnel to have issued to them and carry with them Personal Identity Verification credentials described in 48 CFR 52.204-19,

*Personnel Identity Verification of Contractor Personnel.* FRAGOs routinely specify uniforms and markings for PSC personnel and vehicles, tailored for the specific requirements of the area in which the PSCs are operating. In Afghanistan, these orders require all armed contractors to use uniforms and markings, which clearly distinguish PSC personnel from military or police forces, consistent with the regulations issued by the Afghan Government and approved by the appropriate DoD CO. The PSC Standard, Section 9.2.1.1, also provides that PSCs shall use uniforms and markings to identify their personnel and means of transportation.

**14. Please indicate to what degree contracts with PMSCs provide for the following:**

- a. the ability to terminate the contract for failure to comply with contractual provisions.**

All Federal government contracts may be terminated in whole or in part for default if a contractor fails to perform any provision of a contract. 48 CFR 49.4. In contracts for private security functions outside the United States, 48 CFR 25.302-5 and 252.225-7039(c)(4) further specify that if the performance failures are significant, severe, prolonged, or repeated, the CO shall refer the matter to the appropriate suspension and debarment official.

**b. specifying the weapons required.**

48 CFR 252.225-7040(j) specifies that any requests from the contractor that its personnel in the designated operational area be authorized to carry weapons shall be made through the contracting officer's Combatant Commander, who will determine whether to authorize in-theater contractor personnel to carry weapons and what weapons and ammunition, in accordance with DoDI 3020-41. These determinations are detailed in FRAGOs addressing the arming of DoD civilians and contractor personnel and are specified in contract clauses where contractor personnel are authorized to carry weapons. JTSCC clause 5152.225-5900 is current for such contracts in Afghanistan.

Under the WPS contract, PSC personnel may use only Department of State issued or approved handguns, holsters, support weapons, magazines, optics, other vision enhancement devices, or ammunition, with specific weapon training and qualification requirements established based on the role of the individual and specific carry authority granted by the RSO and any applicable host country authority. Specific weapons requirements are listed in task orders only when they deviate from the weapons requirements in the base contract.

**c. that PMSCs obtain appropriate authorizations from the Territorial State.**

32 CFR 159 provides for the development of procedures for PSC verification that their personnel meet all the legal, training, and qualification requirements for authorization to carry a weapon in accordance with the terms and conditions of the contract and host country law. 48 CFR 52.225-26 and 252.225-7039(b)(2) implement 32 CFR 159 by requiring covered PSCs to ensure that they and all of their personnel responsible for performing private security functions under the contract are briefed on, and understand their obligation to comply with, applicable laws and regulations of the host country.

The PSC Standard, section A.10.2, provides that contractors should be able to demonstrate compliance with legal requirements, including applicable permits or licenses. Specific requirements to obtain and maintain current business licenses and licenses to operate as a PSC are contained in standard clauses in DoD contracts for these services. Similarly, the WPS contract requires each contractor to have a valid operating license and to operate in accordance with all host country laws.

**d. that appropriate reparation be provided for those harmed by misconduct. [GP 14]**

32 CFR 159 provides that all requests to arm PSC personnel shall include a written acknowledgment by the PSC and its personnel that potential civil and criminal liability exists under U.S. and local law or host nation SOFAs for the use of weapons. That section also notes that the written acknowledgment does not limit civil and criminal liability to conduct arising from the use of weapons. For further information on PSC criminal and civil liability, please see responses to questions 15 and 16, below.

**15. Provide details of how you provide for criminal jurisdiction in your national legislation over crimes under national and international law committed by PMSCs and their personnel. This may include details on if you have considered establishing corporate criminal responsibility and/or jurisdiction over serious crimes committed abroad. [GP 19, 49, 71]**

In recent years, the United States has amended both its Federal criminal code and its Uniform Code of Military Justice (UCMJ) to provide greater accountability for civilian employees, contractors, and other civilians supporting and accompanying our armed forces outside the United States who have engaged in criminal misconduct. Under U.S. law, criminal jurisdiction is limited to the territory of the United States absent a provision in a statute that explicitly or implicitly makes it extraterritorial in scope.

The Special Maritime and Territorial Jurisdiction Act (SMTJ) provides jurisdiction for U.S. courts wherever “American citizens and property need protection, yet no other government effectively safeguards those interests.” In 2001, the SMTJ was expanded to provide jurisdiction over certain listed offenses committed by or against a U.S. national on certain physical spaces in a foreign State.

The Military Extraterritorial Jurisdiction Act (MEJA) provides criminal jurisdiction over PSCs to the extent their employment relates to supporting the mission of the Department of Defense overseas. MEJA provides jurisdiction over these individuals if they commit an offense outside the United States that would be punishable if committed within the SMTJ of the United States, as defined in 18 U.S.C. § 7. A number of sections in the U.S. criminal code declare certain conduct, such as murder and other felonies, to be a crime if committed within the SMTJ of the United States.

The War Crimes Act (18 U.S.C. § 2441) provides criminal jurisdiction over conduct overseas that is determined to constitute a war crime when committed by or against a U.S. national or U.S. military member. The Federal Torture Statute (18 U.S.C. § 2340-2340B) provides criminal jurisdiction over U.S. nationals who commit torture anywhere in the world.

Finally, PSC personnel may be subject to the jurisdiction of the UCMJ (10 U.S.C. §§ 801-946). Under the UCMJ, a person serving with or accompanying the U.S. Armed Forces in the field during a declared war or contingency operation may be disciplined for a criminal offense, including by referral of charges to a General Court-Martial. PSC personnel may be ordered into confinement or placed under conditions that restrict movement in the area of operations or administratively attached to a military command pending resolution of a criminal investigation.

The Executive Branch has also supported legislation, introduced during the 112th Congress, which would clarify and expand extraterritorial jurisdiction over Federal contractor personnel operating overseas by providing analogue jurisdiction to MEJA for serious overseas crimes committed by personnel who are not currently covered by MEJA. The Executive Branch continues to support such legislation, and efforts are ongoing to secure its reintroduction in Congress and eventual enactment into law.

**16. Provide details of how you provide for non-criminal accountability mechanisms for improper or unlawful conduct of PMSCs and their personnel. This may include contractual sanctions, referral to competent investigative authorities, providing for civil liability and otherwise requiring PMSCs, or their clients to provide reparation to those harmed by PMSCs. [GP 20, 50, 72]**

The U.S. Government is fully committed to ensuring that PSCs respect applicable national and international laws and are held accountable when they engage in misconduct. Contractual sanctions and civil liability, in U.S. courts and abroad, exist to ensure that PSCs are held accountable for such misconduct. 48 CFR 52.225-26 and 252.225-7039(c) provide that, in addition to other remedies available to the Government, the CO may direct the contractor, at its own expense, to remove and replace any contractor personnel who fail to comply with or violate applicable requirements of the contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of the contract, including termination for default.

Furthermore, PSCs are typically subject to civil litigation in the courts of the territorial State in which they operate. It is not the practice of the United States to accredit as members of the diplomatic mission PSC personnel or to grant such requests submitted by other countries for such personnel working in the United States. Most U.S. Government security contractors operating around the world are not immune from the laws of the host government and may be subject to host government civil jurisdiction.

Finally, those harmed by PSCs may have a number of avenues available for pursuing remedies under U.S. law. For example, the common law of the individual States of the United States may provide for tort liability in certain circumstances. Other cases have been brought under various Federal statutes. In some cases, a cause of action may be available under the Alien Tort Statute (ATS), pursuant to which U.S. Federal courts may hear civil actions by an alien for tort only, committed in violation of the law of nations or a treaty of the United States. 28 U.S.C. § 1330; *see also Kiobel v. Royal Dutch Petro. Co.*, 133 S. Ct. 1659 (2013). PSCs that engage in fraud on a U.S. Government contract can also be held accountable by whistleblowers through qui tam actions under the False Claims Act.

**17. In addition to the criminal and non-criminal mechanisms referred to above, do you have other administrative and other monitoring mechanisms to ensure proper execution of the contract and/or accountability of the PMSC and their personnel for improper conduct? [GP 21]**

As introduced in the response to question 4, above, contracts for private military companies and private security companies are subject to oversight and monitoring through several different means and levels of accountability. Each contract is managed by a warranted CO, who is assisted by CORs responsible for the day-to-day monitoring of the contract and contractor performance. Private security contracts are required to have a COR and a Deputy COR to provide periodic and specified reports to the CO.

The *DoD Standard for Certification of Contracting Officer's Representatives (CORs) for Service Acquisitions* defines minimum COR competencies, experience, and training based on the nature and complexity of the requirement and contract performance risk. COR reports feed the CPARS system, as required by law (described above). The WPS contract has an overall COR for the base contract, a dedicated CONUS and OCONUS COR for each task order, and GTMs for most task orders, as well as GTMs for specific operational areas of concern, such as logistics.

Serious incident reports are required by 32 CFR 159 and 48 CFR 52.225-26 and 252.225-7039. A serious incident involving a DoD contractor is reviewed by responsible officers and, as appropriate, may be the cause for initiation of a Commander's Inquiry under the Rules for Court Martial, Article 303. Similarly, DS may initiate an investigation in the case of an incident involving firearms or violations of U.S. or international law by a WPS contractor. Allegations of misconduct are subject to investigation by military law enforcement agencies, in the case of DoD contractors, and by DS in the case of WPS contractors. Under the WPS contract, PSC personnel may be removed from the task order for incidents of misconduct or other breaches of the standards of conduct contained in the WPS contract and may be deemed ineligible to work on other WPS task orders.

**18. Provide details of how you monitor compliance with the terms of any authorization given to a PMSC. These may include establishing an adequately resourced monitoring authority, ensuring that the civilian population is informed about the rules by which PMSCs have to abide and available complaint mechanisms, requesting local authorities to report on PMSC misconduct and investigating reports of wrongdoing. It may also include establishing close links between your State's authorization-granting authorities and your State's representatives abroad and/or with other States. [GP 46, 68]**

See responses to questions 4 and 17, above. In addition, the WPS contract requires contractors to cooperate fully with DS and local law enforcement authorities. In Iraq and Afghanistan, an Armed Contractor Oversight Directorate (ACOD) was established to operate as a single point for tracking all DoD civilians and contractors and for processing their weapons authorizations. The ACOD has also received and processed serious incident reports regarding DoD contractors. It is anticipated that this function will be replicated in future contingencies. For DoD personnel (including contractors), military commanders are responsible for initiating inquiries and investigations in response to reports of possible misconduct of personnel under their authority.

**19. Provide details of how you impose administrative measures or sanctions if it is determined that a PMSC has operated without or in violation of an authorization. This may include revoking or suspending a license, removing specific PMSC personnel, prohibiting a re-application for authorization, forfeiting bonds or securities, and/or financial penalties. [GP 48, 69]**

See response to questions 7, 9, and 16, above. As stated in response to question 9, above, if a failure to comply with the terms of the contract is severe, prolonged, or repeated, such failure

will be referred to the suspension or debarment official for the appropriate agency and may be a basis for suspension or debarment of the PSC. Under 48 CFR 9.4, a Federal government contractor may be debarred, suspended, proposed for debarment, or declared ineligible for a period of time for committing certain violations of State and Federal law and other offenses indicating a lack of business integrity or honesty. Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action.

**20. Provide details of how you provide a fair opportunity for PMSCs to respond to allegations that they have operated without or in violation of an authorization. [GP 47]**

GP 47 does not apply to the United States, as the United States is not a Territorial State as defined in the Montreux Document.

**21. Provide details of how you support other States in their efforts to establish effective monitoring of PMSCs. [GP 70]**

Where the U.S. Government has used private military companies and private security companies in areas of armed conflict, it has worked with other concerned governments to enable a common perspective on the use of PMSCs to enhance the stability of conflict and post-conflict regions. Most notable is the U.S. Government's early and consistent support of the Montreux Document initiative, the ICoC, and the ICoCA. A partial list of other examples includes:

- Establishment of the Private Security Company Association of Iraq (PSCAI), which enabled Iraq's Ministry of Interior to access a single point of contact for exchange of information and interaction with PSCs operating in its territory. The PSCAI was disestablished on December 31, 2011.
- Establishment of the Contractor Operations Center in Iraq, which maintained situational awareness of PSCs operating in Iraq and a central repository for incident reports and complaints. Information was shared with the Government of Iraq and included the presence of Liaison officers from Iraq in the operations center. This center was closed in January 2012 with the end of military operations, with residual functions transitioned to the Office of Security Cooperation – Iraq.
- Establishment of Task Force Spotlight in Afghanistan to address issues relating to the compliance of PSCs with U.S. and Afghan regulatory requirements. Work was quickly expanded to assist in implementation of Presidential Decree (PD) 62, which initiated the transition of all PSCs to the Afghan Public Protection Force (APPF). (The APPF is a state-owned enterprise that provides security services to domestic and international customers on a pay-for-service basis.) PD62 provides that diplomatic entities may continue to utilize private security. This work included biometric registration of all PSC personnel in Afghanistan and assistance in screening/vetting of PSC and APPF personnel.

- Continued assistance to the Afghan Government in its efforts to meet its Territorial and Home State responsibilities for oversight and regulation of PSCs. In addition to the biometric enrollment mentioned above, this includes:
  - Developing and executing an eight-step vetting process, which meets all requirements of GPs 32 and 60. Noteworthy is the inclusion of references from Tribal Elders attesting to, and guaranteeing, the good conduct and background of PSC and APPF personnel.
  - Assisting the Afghan Government with the introduction of transparent licensing regimes to ensure better supervision and accountability so that only PSCs and other contractors likely to respect international humanitarian law and human rights law, through appropriate training, internal procedures, and supervision, can provide services in areas of armed conflict. (GP 25, 26, 30, 63)
  - Increasing accountability of superiors of PSC personnel, including government officials and PSC managers consistent with Legal Obligation 27.
  - Establishing standardized criteria for PSC personnel training in relevant Afghan law, including law of armed conflict and applicable human rights law consistent with GP 35 and 63.

**22. In negotiating with other States agreements which contain rules affecting the legal status of and jurisdiction over PMSCs and their personnel (e.g. Status of Forces agreements). Please provide details on how you take into consideration the impact of the agreement on the compliance with national laws and regulations, and how you address the issue of jurisdiction and immunities. [GP 22, 51]**

See response to question 16, above. The U.S. Government is fully committed to ensuring that U.S. contractors who are accused of committing crimes abroad are investigated and, when warranted, fully prosecuted. It is not the common practice of the United States to seek immunity from host government criminal jurisdiction for PSCs contracting with the U.S. Government. Most PSCs operating around the world under contract with the U.S. Government are subject to the criminal jurisdiction of the host government.

In any event, PSCs and other contractors operating under contract with the U.S. Government are instructed to follow the laws of the host government. There are also means to prosecute contractor personnel in U.S. courts when they are not held accountable under the host government's legal system for criminal activity, including the Military Extraterritorial Jurisdiction Act (MEJA), which provides for U.S. jurisdiction over contractors if they are working abroad on a Department of Defense contract or a contract of any other Federal agency to the extent that their employment relates to supporting the mission of the Department of Defense.

**23. Please provide details of your cooperation with the investigating or regulatory authorities of other States in matters of common concern regarding PMSCs. [GP 23, 52, 73]**

Currently, our work with the Government of Afghanistan provides the best example of such activities. The authorities currently being worked in Afghanistan involve the establishment and the assessment aspects of the APPF and the transition away from the use of PSCs. In August 2010, President Karzai issued PD62, directing dissolution of PSCs and expansion of the APPF. Shortly after PD62 was released, the Government of Afghanistan requested NATO assistance with the stand-up of the APPF. The International Security Assistance Force (ISAF), Ministry of Interior (MoI), and U.S. Embassy Kabul conducted a six-month assessment completed in September 2011 that baselined the status of the APPF's capability to conduct two core functions: execute business functions and generate/employ a force. Based on this assessment, ISAF formed a Joint Planning Team (JPT) to create a deliberate plan to build the APPF's capacity to manage the transition from the use of PSCs. The result of this plan was the September 2011 creation of the APPF Advisory Group (AAG) assigned to NATO Training Mission – Afghanistan (NTM-A/CSTC). From the time the AAG was created, the AAG has conducted assessments every 3-6 months. The focus of these efforts is to complete the establishment of the APPF and to provide another security pillar in Afghanistan. The AAG is currently overseeing the transition of security for ISAF bases and convoys to the APPF.

**24. Please list any other measures you have in place for overseeing and/or contracting with PMSCs, and briefly describe how they are implemented or enforced.**

The U.S. Government has several oversight, policy, and contracting offices and bureaus that are, or have been, dedicated to evaluating the U.S. Government's use of PSCs and our broader national interests in this area. These include:

- The Government Accountability Office: Independent, nonpartisan U.S. agency within the legislative branch that investigates how the Federal government spends money and provides advice on ways to make government more efficient and effective. The GAO has published reports on the U.S. Government's use of PSCs.
- Commission on Wartime Contracting: Independent, bipartisan commission established by Congress to study wartime contracting in Iraq and Afghanistan. The Commission issued a publically available final report to Congress in August 2011, which included recommendations to Congress on the use of PSCs.
- Department of State Bureau of Diplomatic Security: The Department bureau that manages the oversight of, and provides operational guidance to, PSCs providing security at U.S. diplomatic and consular facilities abroad.
- Contractor Operations Center: This center operated in Iraq from 2004 through 2012 to maintain situational awareness of PSCs operating in Iraq, including their licensing, movements, incident responses, and incident reporting.

- Armed Contractor Oversight Directorates: Directors in Iraq and Afghanistan responsible for monitoring PSCs under DoD contracts and for processing arming authorization requests, maintaining PSC personnel census data, verifying the accuracy of PSC information in the SPOT database, and conducting or coordinating biometric enrollment of PSC personnel.
- Contingency Contractor Standards and Compliance: Department of Defense office responsible for maintaining, developing, and promoting policy and operational guidance for all armed contractors operating in support of U.S. operations in armed conflict and similar environments. Works closely with the Director, Defense Procurement and Acquisition Policy, the Office of the Assistant Secretary of the Army for Procurement, and the Defense Acquisition Regulations Council to provide current and effective contracting procedures, policies, and regulations that implement U.S. national policy regarding PSCs and PMCs.